name of the president, directors, and company of the bank of Hudson, they have done the acts in the information alleged." An examination of the cases will uphold the old rule, that an action to prevent the exercise of a franchise is well brought against the corporation. But a quo warranto to oust the corporation, must be brought against the individuals claiming to be a corporation; otherwise the pleading, on its face, admits the existence of the corporation, and therefore the existence cannot be questioned. The Kansas court is not in accord with the weight of authority. It does not recognize this technicality in pleading, that the effect of bringing quo warranto against the corporate body alone, admits the existence thereof, and may not later be taken advantage of by the state in claiming illegality, fraud, or non-compliance with the law in organization.

GUARANTY—OFFER—ACCEPTANCE.—One M. was appointed the agent of the plaintiff in the handling and sale of its machinery, etc., and on the back of the agency contract, was the following: "In consideration of the appointment or retention of the above party as agent, etc., etc. * * * the undersigned jointly and severally guaranty the fulfillment by the said agent of all his duties or obligations growing out of that relation, etc., etc. * * * A mere offer to guaranty is not binding until notice of its acceptance is communicated by the guarantee to the guarantor; but an absolute guaranty is binding upon the guarantor without notice." S. D. Rev. Code, 1897. No consideration passed from the guarantee to the guarantor, and no notice was sent. M. defaulted and owes a large amount of money to the plaintiff. Defendants when called upon to pay and to fulfill the guaranty, claimed that there was no such contract, and that they were not liable because no notice had been sent them, and that they only extended a mere offer of guaranty. In action by plaintiff it is *held,* that above was a mere offer of guaranty and would not become effective without notice. *William Deering & Co.* v. *Mortell* (1906), — S. D. —, 110 N. W. Rep. 86.

The court was clearly right in the conclusion that it reaches. The distinction between an offer of guaranty and an absolute guaranty, is made in the South Dakota Code, but the court would undoubtedly be of the same opinion without the code provision. Indeed the distinction has long existed, and is well settled, but new facts arise which require interpretation. JUSTICE GRAY, in *Davis Sewing Machine Co.* v. *Richards,* 115 U. S. 327, lays down the means of ascertaining whether a given case is merely an offer of guaranty, or an absolute guaranty. He says, "Those rules may be summed up as follows: A contract of guaranty, like every other contract, can only be made by the mutual assent of the parties. If the guaranty is signed by the guarantor at the request of the other party, or if the latter's agreement to accept is contemporaneous with the guaranty, or if the receipt from him of a valuable consideration, however small, is acknowledged in the guaranty, the mutual assent is proved, and the delivery of the guaranty to him or for his use completes the contract." Meeting of minds may be evidenced by other modes than the formal giving of notice. Where consideration of the guaranty moves to the guarantor. *Doud* v. *Bank,* 54 Fed. 846. An absolute guaranty is in

effect a proposal or offer, and, therefore, acceptance by third party completes the contract. *Craft* v. *Isham,* 13 Conn. 28; *Bradley* v. *Carey,* 8 Me. 234; *Klosterman* v. *Olcott,* 25 Neb. 382. The court in the principal case follows the case of *Standard etc. Co.* v. *Church,* 11 N. D. 420, which holds under similar facts that the guarantee must, under the statute, not only act upon the guaranty but must notify the guarantor of acceptance.

HOMESTEAD—ABANDONMENT.—This is an action for a tract of land. The plaintiff was a purchaser at an execution sale under a judgment against one Dane. It seems that Dane and his wife, the defendant herein, had lived upon the premises for many years as their home. In 1896, they separated, both leaving the place. The wife did not remain because she could not live there alone. She remained away for nearly five years and then returned with her grandchildren. In the meantime, after the husband had left, but before the wife returned, a judgment was obtained against Dane, the husband, and sale of the land was made thereunder and purchase was made by the plaintiff. The plaintiff now sues the wife for the land. *Held,* he cannot recover, since the wife had not abandoned the homestead, but still retained her rights therein. *Montgomery* v. *Dane* (1906), — Ark. —, 98 S. W. Rep. 715.

The state constitution provides for exemptions of the "homestead of the head of a family which shall be owned and occupied as a residence * * * and be selected by the owner." Sections 3901, 3902 provide that a conveyance of the homestead without the joinder of the wife shall be void; that it need not be selected and claimed before sale but may be done afterwards; that if the husband neglects or refuses to make claim, the wife may do it in his stead. The question of the abandonment of the homestead depends largely upon the intent of the claimant. If he intended not to return at the time of his removal, his homestead right is lost unless he actually returns with his family. He may even go on an extended tour, be absent for several years, and rent the place in the meantime, provided he did not intend to abandon the premises. *Tumlinson* v. *Swinney,* 22 Ark. 400. In Illinois, however, it has been held that the exemption is lost by leaving the premises and renting them. *Cabeen* v. *Mulligan,* 37 Ill. 230. In case the husband leaves the wife, the presumption is that he will return and, therefore, this supposed temporary absence would not forfeit the wife's right to the homestead. In the case of *Barker* v. *Dayton,* 28 Wis. 383, it was said, "that it is well settled that the wife, if driven from her home by the cruelty of her husband, loses no rights and forfeits none of the immunities or privileges to which she is entitled by law; but that she retains the same without prejudice, as if she had remained in the house, or continued to reside with her husband." In the principal case the wife was driven from her home by necessity. She was an aged lady and under the circumstances could not remain alone. She did not intend to abandon the place, but kept in touch with it through her tenants, and when she returned, her right to the homestead should not be barred. This is a good case on the subject, and is in accord with reason and justice. Authorities in point may be found in the following: *Newton* v. *Russian,* 74 Ark. 88, 85 S. W. Rep. 407; *Walters* v. *People,* 18 Ill. 194, 65